Bank Bumiputra Malaysia Bhd v Pentadbir Tanah Daerah Gombak

HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION NO R1-25-98-91
EUSOFF CHIN J
10 SEPTEMBER 1991

Land Law *— Auction sale — Charged land to be sold together — Conditions of sale included forfeiture of 10% deposit to state authority if purchaser failed to complete sale — Whether condition lawful — Whether lands should be sold individually rather than together — National Land Code 1965 ss 257, 258, 259, 263, 264, 265 & 268*

Land Law *— Auction sale — Conditions of sale — Who is to prepare conditions*

Words and Phrases *— 'Such other directions with respect to the sale' — National Land Code 1965 s 257(2)*

Words and Phrases *— 'Purchase money' — National Land Code 1965 s 268*

Words and Phrases *— 'Any sale' — National Land Code 1965 s 268(1)*

Adilbena Sdn Bhd ('the chargor') charged 19 pieces of land ('the charged lands') to Bank Bumiputra Malaysia Bhd ('the chargee') as security to obtain a loan of $1.26m. The charge was registered by the Land Administrator, Gombak, on 10 March 1984. The chargor subsequently defaulted in paying the debt demanded by the chargee who then applied to the land administrator for an order for sale. The land administrator acting under s 263 of the National Land Code 1965 ordered the charged lands to be sold, together instead of individually, by public auction. As no bid was received at the public auction, the land administrator directed that the charged lands be put up for another auction. The date of the second sale was postponed for over a year by the land administrator. The chargee had meanwhile requested the land administrator to revise the reserve price to reflect the current market value of the charged lands. The land administrator refused to grant the above request of the chargee and also the chargee's request to have the lands sold individually.

On 17 July 1991, the chargee received from the land administrator a copy of the proclamation of sale of the charged lands for the auction scheduled on 13 August 1991, where items 6 and 7 of the conditions of sale stated that a successful bidder was required forthwith to pay, as deposit, 10% of the purchase price and to pay the balance of 90% of the purchase price within 90 days from the date of the auction. If the successful bidder failed to pay the balance of the purchase price within 90 days, the 10% deposit of the purchase price paid to the land administrator would be forfeited to the state authority. On 6 August 1991 the chargee filed this application in the High Court for an order directing the land administrator to increase the reserve price to $1m to reflect the market value, and that items 6 and 7 of the conditions

of sale be varied so that if the 10% of the purchase price is to be forfeited, it should be paid to the chargee, and not to the state authority. The court ordered that the reserve price be fixed at $1m. Further arguments were subsequently heard on the issue of forfeiture of the deposit.

Held, varying the conditions as regards forfeiture:

(1) The law requires that the sale of land subject to the charge must be done, not by the chargor or the chargee, but by a neutral person, ie the land administrator or the court with or without the assistance of a licensed auctioneer. Any money paid by a successful bidder at the auction sale must go towards the settlement of the chargor's debt to the chargee but subject to the provision of s 268 of the National Land Code 1965. The state authority is not a party to the loan transaction. It has no right to claim, and is not entitled to forfeit, the 10% deposit of the purchase price. Even if the land administrator when making the order of sale under s 263 makes it a condition of sale that the 10% deposit is to be forfeited to the state authority if the balance of the purchase price is not paid within 90 days of the auction date, that condition is invalid and unconstitutional, as it offends art 13 of the Federal Constitution.

(2) Section 263(2) of the Code allows the land administrator to apply the provision of s 257(2) of the Code, ie when he makes the order of sale, his order 'may contain such other directions with respect to the sale'. This is where he may specify that the highest bidder is required to pay 10% of the purchase price on the fall of the hammer, and if the 90% (balance) of the purchase price is not paid within 90 days from the date on which the auction was held that amount may be forfeited and paid out in accordance with s 268 of the Code. Even if he does not say to whom the forfeited money would go, the 10% of the purchase price being part payment of the full purchase price, must be paid out in accordance with s 268 of the Code. The words 'such other directions with respect to the sale' do not give authority to the land administrator to give directions which are unlawful, such as happened here, where the land administrator directed that the forfeited 10% of the purchase money would be paid to the state authority.

(3) Where more than one piece of land are the subject of a charge, the land administrator may specify in his order of sale that the lands be sold individually (see s 257(2)(a) and (b) of the Code). It is easier to get bidders to buy the lands individually than to get a bidder to buy, as happened here, 19 pieces of land together at $1.3m. Where a court orders the sale, the chargee has to prepare the 'conditions of sale'. But where the sale is ordered by the land administrator, it is the land administrator who has to prepare the conditions of sale. In any event, the 'conditions of sale' must be in accordance with the terms of the order of sale (see s 258(2) of the Code).

[Bahasa Malaysia summary

Adilbena Sdn Bhd ('penggadai') telah mencagar 19 bidang tanah ('tanah yang dicagarkan itu') kepada Bank Bumiputra Malaysia Bhd ('pemegang gadaian') sebagai cagaran untuk mengambil satu pinjaman sebanyak $1.26 juta. Cagaran itu telah didaftarkan oleh Pentadbir Tanah, Gombak pada 10 Mac 1984. Penggadai kemudiannya telah ingkar dalam membayar balik hutang yang dituntut oleh pemegang gadaian itu yang seterusnya memohon kepada pentadbir tanah untuk perintah jualan. Pentadbir tanah, bertindak di bawah s 263 Kanun Tanah Negara 1965, telah memerintahkan supaya tanah yang dicagarkan itu dijual, bersama dan bukan berasingan, melalui lelong awam. Oleh kerana tiada tawaran yang diterima di lelong awam itu, pentadbir tanah memerintahkan agar tanah yang dicagarkan itu dikemukakan di lelong awam yang lain. Tarikh jualan yang kedua itu telah ditangguhkan selama lebih daripada setahun oleh pentadbir tanah. Pemegang gadaian sementara itu meminta pentadbir tanah mengkaji semula harga rizab supaya mencerminkan harga pasaran semasa tanah yang dicagarkan itu. Pentadbir tanah enggan berbuat demikian dan juga menolak permintaan pemegang gadaian agar tanah itu dijual berasingan.

Pada 17 Julai 1991, pemegang gadaian telah menerima daripada pentadbir tanah satu salinan perisytiharan jualan tanah yang dicagarkan itu untuk lelong yang dijadualkan pada 13 Ogos 1991, di mana perkara 6 dan 7 syarat-syarat jualan menyatakan bahawa penawar yang berjaya dikehendaki pada masa itu juga membayar, sebagai wang cengkeram, 10% daripada harga pembelian dan membayar baki 90% daripada harga pembelian itu dalam masa 90 hari dari tarikh lelong. Jika penawar yang berjaya itu gagal membayar baki harga pembelian dalam masa 90 hari, wang cengkeram 10% itu yang telah dibayar kepada pentadbir tanah akan dilucuthak (forfeited) dan diserahkan kepada pihak berkuasa negeri. Pada 6 Ogos 1991 pemegang gadaian telah memfail permohonan ini di Mahkamah Tinggi untuk perintah mengarahkan pentadbir tanah menaikkan harga rizab kepada $1 juta supaya mencerminkan harga pasaran, dan bahawa perkara 7 dan 6 syarat-syarat jualan itu ditukar agar sekiranya 10% daripada harga pembelian itu dilucuthak, ia seharusnya dibayar kepada pemegang gadaian, dan bukan kepada pihak berkuasa negeri. Mahkamah mengarahkan harga rizab ditetapkan pada $1 juta. Hujah lanjut kemudiannya didengar tentang isu perlucutanhak wang cengkeram.

Diputuskan, meminda syarat-syarat berkenaan perlucutanhak seperti berikut:

(1) Undang-undang memerlukan jualan tanah yang dicagarkan dijalankan, bukan oleh penggadai atau pemegang gadaian, tetapi oleh seorang yang bebas, iaitu pentadbir tanah atau mahkamah dengan atau tanpa bantuan seorang pelelong berlesen. Apa-apa wang yang dibayar oleh seorang penawar yang berjaya di jualan lelong mesti digunakan untuk menjelaskan hutang penggadai

kepada pemegang gadaian tetapi tertakluk kepada peruntukan s 268 Kanun Tanah Negara 1965. Pihak berkuasa negeri bukan satu pihak kepada transaksi pinjaman itu. Ia tiada hak menuntut, dan juga tidak berhak melucuthak, wang cengkeram 10% harga pembelian itu. Biarpun pentadbir tanah semasa membuat perintah jualan di bawah s 263 menetapkan sebagai satu syarat jualan bahawa wang cengkeram 10% itu dilucuthak dan diserahkan kepada pihak berkuasa negeri jika baki harga pembelian itu tidak dibayar dalam masa 90 hari dari tarikh lelong, syarat itu tidak sah dan tidak berperlembagaan, kerana ia bercanggahan dengan perkara 13 Perlembagaan Persekutuan.

(2) Seksyen 263(2) Kanun itu membenarkan pentadbir tanah menggunakan peruntukan s 257(2) Kanun itu, yakni apabila beliau membuat perintah jualan, perintah beliau 'may contain such other directions with respect to the sale'. Di sini beliau boleh menetapkan bahawa penawar tertinggi dikehendaki membayar 10% harga pembelian itu apabila tukul kayu pelelong jatuh, dan jika 90% (baki) harga pembelian itu tidak dibayar dalam masa 90 hari dari tarikh lelong itu, amaun itu boleh dilucuthak dan dibayar mengikut s 268 Kanun itu. Meskipun jika ia tidak menyatakan kepada siapa wang yang dilucuthak itu harus dibayar, 10% harga pembelian itu yang merupakan sebahagian daripada harga pembelian sepenuh, mesti dibayar mengikut s 268 Kanun itu. Perkataan-perkataan 'such other directions with respect to the sale' tidak memberi kuasa kepada pentadbir tanah membuat perintah yang salah di sisi undang-undang seperti yang berlaku di sini, di mana pentadbir tanah mengarahkan bahawa 10% harga pembelian yang dilucuthak itu dibayar kepada pihak berkuasa negeri.

(3) Apabila lebih daripada sebidang tanah dicagarkan, pentadbir tanah boleh menyatakan di dalam perintah jualannya supaya tanah-tanah itu dijual berasingan (lihat s 257(2)(a) dan (b) Kanun itu). Adalah lebih mudah untuk mendapatkan penawar untuk membeli tanah berasingan daripada mendapatkan seorang penawar untuk membeli, seperti di sini, 19 bidang tanah bersama pada harga $1.3 juta. Apabila mahkamah memerintahkan jualan, pemegang gadaian wajib menyediakan syarat-syarat jualan itu. Tetapi apabila jualan itu diperintahkan oleh pentadbir tanah, pentadbir tanah wajib menyediakan syarat-syarat jualan. Apa sekali pun, syarat-syarat jualan itu mestilah menurut peruntukan perintah jualan itu (lihat s 258(2) Kanun itu).]

Case referred to

1 *Soper v Arnold* (1889) 14 App Cas 429 (refd)

Legislation referred to

Federal Constitution art 13

National Land Code 1965 ss 257, 258, 259(2), (3), 263, 264(1), 265(1)(a), 265(4), 268, Forms 16D, 16G

Pawancheek bin Marican (*Wan Marican Hamzah & Shaik*) for the applicant. A

Salehuddin bin Saidin (Deputy State Legal Adviser, Selangor) for the respondent.

Cur Adv Vult B

Eusoff Chin J: On 29 February 1984 Adilbena Sdn Bhd ('the chargor') charged 19 pieces of land ('the charged lands') to Bank Bumiputra Malaysia Bhd ('the chargee') as security to obtain a loan of $1.26m The charge was registered by the Land Administrator, Gombak on 10 March 1984.

On 2 December 1986, the chargee issued a notice in Form 16D of the National Land Code 1965 ('NLC') demanding payment from the chargor of $1,199,663.57. The chargor did not settle the amount within the time stipulated in the notice. The chargee applied in Form 16G of the NLC to the land administrator for an order of sale of the charged lands. After making due enquiry, the land administrator acting under s 263 of the NLC ordered the charged lands to be sold, together instead of individually, by public auction on 9 January 1990, at a reserve price of $1,315,000. On 9 January 1990, no bid was received at the public auction, at or above the reserve price, and the land administrator withdrew the sale. He directed that the said land be put up for another auction on 30 April 1990 at a reserve price of $854,000. The date of the second sale was postponed for over a year by the land administrator to 13 August 1991. C D E

The chargee had, meanwhile on 8 January 1991, requested the land administrator to fix the reserve price at $1m because the reserve price of $854,000 reflected the market value of the charged lands in the year 1988 when there was economic recession in the property market. However, the land administrator refused to grant the request of the chargee. He also refused to grant the request of the chargee to have the lands sold individually, notwithstanding that under ss 263(3) and 257(2)(a) of the NLC the land administrator could validly grant such a request. F

On 17 July 1991, the chargee received from the land administrator a copy of the proclamation of sale of the charged lands for the auction scheduled on 13 August 1991. The chargee observed that items 6 and 7 in the 'conditions of sale' stated that a successful bidder was required forthwith to pay, as deposit, 10% of the purchase price and to pay the balance of 90% of the purchase price within 90 days from the date of the auction. If the successful bidder fails to pay the balance of the purchase price within the 90 days, the 10% deposit of the purchase price paid to the land administrator would be forfeited to the state authority. At the earlier aborted auction sale, the proclamation did not contain such a forfeiture clause, and the chargee is now aggrieved by this decision of the land administrator since the chargee feels that the 10% deposit should rightly be paid to the chargee. G H

On 6 August 1991 the chargee filed this application in the High Court for an order directing the land administrator to increase the reserve price of $1m to reflect the market value, and that items 6 and 7 in the 'conditions of sale' be varied so that if the 10% of the purchase price is to be forfeited, it should be paid to the chargee, and not to the state authority. I

A The Land Administrator, Gombak is cited as the defendant. The land administrator represented by the learned Deputy State Legal Adviser, Selangor did not file any affidavit in reply in this application since the defendant did not dispute the facts, and the parties proceeded to argue on the law.

B On 12 August 1991, I heard the application, and having heard arguments and examining the valuation report on the said lands prepared by Jurunilai Bersekutu, I made the order that the reserve price be fixed at $1m. I adjourned the hearing to 17 August 1991 for further arguments on the issue of forfeiture of the 10% deposit of the purchase price.

C *Power to require payment of 10% deposit*

At the adjourned hearing, learned counsel for both parties agreed that there is no specific provision in the NLC requiring the successful bidder at an auction sale to make any part payment of the purchase price on the fall of the auctioneer's hammer or for the balance to be paid within 90 days from D the date of the auction sale.

I am of the view that the authority to impose a condition that a successful bidder at an auction sale shall be required to pay part of the purchase price as deposit on the fall of the auctioneer's hammer may form part of the order of sale made by the land administrator under s 263(2) read with s 257(2) of the NLC. Section 263 of the NLC states:

E (1) At the conclusion of any enquiry under section 261, the Land Administrator shall order the sale of the land or lease to which the charge in question relates unless he is satisfied of the existence of cause to the contrary.

(2) Every such order shall be in Form 16H, and shall —

(a) provide for the sale to be by public auction;

F (b) specify the date on which the sale is to be held, being a date not less than one month after the date on which the order is made;

(c) specify the amount due to the chargee at the date on which the order is made; and

(d) fix a reserve price for the purpose of the sale, being a price equal to the market value of the land or lease in question as estimated by the Land G Administrator.

(3) The provisions of sub-sections (2) and (3) of section 257 *shall apply* mutatis mutandis, to orders under this section as they apply to orders of the Court under section 256.

For ease of reference, I quote here the provision of s 257 of the NLC which H is:

(1) Every order for sale made by the court under section 256 shall —

(a) provide for the sale to be by public auction;

(b) require the sale to be held on, or as soon as may be after, a date specified therein, being a date not less than one month after the date on I which the order is made;

(c) specify the total amount due to the chargee at the date on which the order is made; and

(d) require the Registrar of the Court to fix a reserve price for the purpose of the sale, being a price equal to the estimated market value of the land or lease in question.

(2) Any such order *may contain such other directions with respect to the sale* as the Court may think fit, and in particular (but without prejudice to the generality of the foregoing) may, where the charge in question relates to more lands or leases than one, direct —

(a) that they be offered for sale *individually*, and in a specified order; and

(b) that, in the event of the price fetched by one or more of them exceeding an amount specified in the order, or to be determined by the Registrar of the Court, the other or others shall be withdrawn from the sale, and shall cease to be subject to the order.

(3) If specifying or determining any amount for the purposes of paragraph (b) of sub-section (2), the Court or the Registrar, as the case may be, shall have regard not only to the liability of the chargor under the charge, but also to any liabilities which (under section 268) will fall to be discharged out of the proceeds of sale in priority thereto.

The words 'may contain such other directions with respect to the sale' contained in s 257(2) of the NLC gives wide powers to the court and the land administrator, but such directions must be lawful directions. The direction given by the land administrator for the successful bidder to deposit 10% of the purchase price on the fall of the hammer is quite lawful, as this is earnest money to bind the successful bidder to complete the purchase.

Preparation of the 'conditions of sale'

In the case of an order of sale made by the court, the court's order made under s 257(1) and the other directions with respect to the sale made by the court under s 257(2) shall form part of the 'conditions of sale' which the chargee has to prepare under s 258(2)(a) of the NLC. Section 258 of the NLC states:

Procedure prior to sale

(1) Where any such order has been made, it shall be the duty of the Registrar of the Court —

(a) to serve a copy thereof on the chargor, and on every chargee of the land or lease in question; and

(b) to *see* that the sale is publicly advertised in accordance with rules of court or, in the absence of any rule in that behalf, the practice customarily adopted in the State.

(2) The *chargee* on whose application the order was made shall —

(a) prepare the *conditions of sale, in accordance with the terms of the order* and any determination thereunder by the Registrar of the Court.

However, in the case of an order of sale ordered by the land administrator, there is no duty imposed on the chargee to prepare the conditions of sale contained in the public notice or proclamation of sale and this is the duty of the land administrator to perform under s 264(1)(b) of the NLC which states:

Procedure prior to sale

(1) After making any order under section 263, the Land Administrator shall —

(a) serve a copy thereof on the chargor, and on every chargee of the land or lease in question; and

(b) *give* public notice of the sale in such manner as he may consider appropriate.

(2) The chargee on whose application the order was made shall deposit with the Land Administrator, not less than seven days before the date fixed for the sale —

(a) the duplicate charge; and
(b) if in his custody, the issue document of title to the land or, as the case may be, duplicate lease.

Whether it is lawful for the 10% deposit to be forfeited to the state authority?

The next question to be considered and determined by this court is, whether it is lawful for the land administrator to impose a condition of sale which is: where a successful bidder at the auction sale having paid the 10% of the purchase price (hereinafter called 'the deposit') to the land administrator, fails to pay the balance of the purchase price within 90 days from the date of the auction, the land administrator is entitled to forfeit the deposit to the *state authority*.

Learned counsel for the land administrator argued that this is a valid condition because of the provision of s 265(1)(a) of the NLC which states:

Procedure at sale

(1) Where a sale is held pursuant to an order under section 263 —

(a) the sale shall take place *under the direction* of the Land Administrator, who may take the assistance thereof of any licensed auctioneer;

According to him the words 'under the direction of the land administrator' in s 265(1)(a) gives the land administrator the right to direct or impose the conditions that the deposit will be forfeited to the state authority. With respect, I do not think this is so. What this section means is that how the sale is to be conducted shall be as directed by the land administrator, and where the land administrator has had no experience in conducting an auction sale, he may employ the services of a licensed auctioneer to perform or conduct the sale of the land.

As regards the validity of the condition on the forfeiture of the deposit to the state authority, I think it is an illegal condition, being contrary to the provision of s 268 of the NLC, which states:

Application of purchase money

(1) *The purchase money* arising on *any* sale under this Chapter shall be applied as follows —

(a) firstly, in the payment of rent to the State Authority or the lessor (according as the charge was a charge of land or of a lease) and, so far as no person other than the chargor was responsible therefor, any other outgoings payable to the State Authority or any local authority;
(b) secondly, in the payment of the expenses (as certified by the Registrar of the Court or Land Administrator, as the case may be) incurred in connection with the making and carrying into effect, of the order for sale;
(c) thirdly, in the payment to the chargee of the total amount due under the charge at the time of the sale;

(d) fourthly, in the case of a charge to secure the payment of an annuity or other periodic sum, in accordance with any provision for the satisfaction of payments subsequently falling due included therein pursuant to paragraph (b) of sub-section (2) of section 242; and

(e) fifthly, in the payment off of subsequent charges, if any, in the order of their priority.

(2) The reference in paragraph (e) of sub-section (1) to the payment off of subsequent charges is a reference —

(a) in the case of a charge to secure the repayment of a debt, or the payment of any sum other than a debt, to the payment to the chargee of the principal sum thereby secured (or so much thereof as is then outstanding) together with any interest then due;

(b) in the case of a charge to secure the payment of an annuity or other periodic sum, to the payment to the chargee of all sums then due, and the giving effect to any provision for the satisfaction of payments subsequently falling due included therein as mentioned in paragraph (d) of sub-section (1).

(3) The residue, if any, of the purchase money shall, subject to sub-section (3) of section 339, be paid to the chargor.

Learned counsel for the land administrator submitted that the opening words of s 268(1) of the NLC which are 'The purchase money arising on any sale' refer to the total purchase price of a completed sale. He said that since the deposit represents only 10% of the purchase price, s 268 of the NLC cannot apply. Again, with respect I cannot accept this view.

It is necessary to first examine the provision of s 259(2) and (3) of the NLC, which states:

(2) The officer under whose direction the sale takes place shall —

(a) receive the bids (including any bid by or on behalf of the chargee);

(b) settle summarily any question arising in the course of the proceeding;

(c) in the absence of any bid at or above the reserve price, withdraw the land or lease in question from the sale, direct that it be put up for auction on a subsequent date, either at the same or at a reduced reserve price, and see that the subsequent sale is publicly advertised in the like manner; and

(d) subject to paragraph (c), *declare the sale concluded* in favour of the highest bidder.

(3) The purchaser at the sale shall, upon payment to the said officer of the *full amount of the purchase price*, be entitled to receive from him —

(a) a certificate in Form 16F that the land or lease in question has been sold to him under the authority of this Act (which certificate shall, as provided by section 267, be registrable by the purchaser as if it were an instrument of dealing).

It is clear that when the officer directing the sale 'declares the sale of land concluded in favour of the highest bidder' under s 259(2)(d), the land is deemed sold to the highest bidder. Section 259(3)(a) provides that if the highest bidder pays the *full* amount of the purchase price, he is entitled to receive the certificate mentioned in s 259(3)(a) of the NLC. Similar provision on this matter is provided under s 265(4) of the NLC (in case of sale ordered by the land administrator).

Coming back to s 268 of the NLC, I am of the opinion that whether it is 10% of the purchase money or the full amount of the purchase money paid by the highest bidder it is still a 'purchase money' within the meaning of s 268 of the NLC. I am further of the opinion that the words 'any sale' appearing in s 268(1) of the NLC refer to a sale having taken place on the fall of the hammer, notwithstanding that the purchaser subsequently does not settle the full price. Had s 268(1) intended otherwise, that section would have been worded differently, eg the opening words of that section could say: 'The *full* amount of the purchase price ...' as is found in s 259(3) and s 265(4) of the NLC.

The 10% deposit of the purchase money is, therefore, part payment of the full purchase price and must be treated as 'The purchase money'. What is a deposit under the circumstances was described by Lord MacNaghten in *Soper v Arnold*,[1] at p 435 as follows:

> Everybody knows what a deposit is ... The deposit serves two purposes — if the purchase is carried out it goes against the purchase price — but its primary purpose is this, it is a guarantee that the purchaser means business.

One other matter to be considered is that the land was charged to the chargee as a security to guarantee payment of a debt by the chargor to the chargee. The order of sale was made at the instance of the chargee for the sole purpose of recovering the debt owed by the chargor. The law requires that the sale of a land subject to the charge must be done, not by the chargor or the chargee, but by a neutral person, ie the land administrator or the court with or without the assistance of a licensed auctioneer. Any money paid by a successful bidder at the auction sale must go towards the settlement of the chargor's debt to the chargee but subject to the provision of s 268 of the NLC. The state authority *is not a party* to the loan transaction. It has no right to claim, and is not entitled to forfeit, the 10% deposit of the purchase price. Even if the land administrator when making the order of sale under s 263 makes it a condition of sale that the 10% deposit is to be forfeited to the state authority if the balance of the purchase price is not paid within 90 days of the auction date, that condition is invalid and unconstitutional, as it offends art 13 of the Federal Constitution.

Conclusions

Having examined the relevant provisions of the NLC, I come to the following findings:

(1) When a land administrator makes an order of sale under s 263(1) of the NLC, he must:

(a) order the sale to be by public auction;
(b) fix the date of the auction sale, and this date cannot be earlier than one month from the date of the order;
(c) state exactly the amount due to the chargee on the date on which the order is made; *and*
(d) fix the reserve price of the land for the purpose of the sale, and the reserve price must be what, in the estimation of the land administrator, the market value of the land is.

If the land administrator does not record any of these four items in his order, he has not complied with the law, and his order is invalid.

(2) Section 263(2) of the NLC allows the land administrator to apply the provision of s 257(2) of the NLC, ie when he makes the order of sale, his order 'may contain such other directions with respect to the sale'. This is where he may specify that the highest bidder is required to pay 10% of the purchase price on the fall of the summer, and if the 90% (balance) of the purchase price is not paid within 90 days from the date on which the auction was held that amount may be forfeited, and paid out in accordance with s 268 of the NLC. Even if he does not say to whom the forfeited money would go, the 10% of the purchase price being part payment of the full purchase price, must be paid out in accordance with s 268 of the NLC.

The words 'such other directions with respect to the sale' does not give authority to the land administrator to give directions which are unlawful, such as happened here, where the land administrator directed that the forfeited 10% of the purchase money would be paid to the state authority.

Where more than one land are the subject of a charge, the land administrator may specify in his order of sale that the lands be sold *individually* (see s 257(2)(a) and (b) of the NLC). I think the legislature was aware that it is easier to get bidders to buy the lands individually than to get a bidder to buy, as happened here, 19 pieces of land at $1.3m.

(3) Where a court orders the sale, the chargee has to prepare the 'conditions of sale'. But where the sale is ordered by the land administrator, it is the land administrator who has to prepare the conditions of sale. In any event, the 'conditions of sale' must be in accordance with the terms of the order of sale — see s 258(2) of the NLC.

Order

For the reasons given, I make the order that condition Nos 6 and 7 in the proclamation of sale issued by the land administrator be amended to the effect that the 10% of the purchase price if forfeited shall be applied in accordance with the provisions of s 268 of the NLC. I also ordered that each party bears its own costs.

Order accordingly.

Reported by Wong Kim Fatt